

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rosser Texas Post Office
Rosser, Texas

Docket No. A2011-23

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(September 16, 2011)

I. INTRODUCTION AND BACKGROUND

On July 14, 2011, the Commission docketed the petitions for review of the closing of the Rosser Texas Post Office (Rosser) in Rosser Texas.¹ On July 19, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² On July 29, 2011, the Postal Service filed an electronic version of the Administrative Record (AR) concerning and including the Final Determination to Close the Rosser, Texas Post Office and Establish Service by Rural Route Service, Postal Service Docket Number 1379938-

¹ There are two petitions for review: Petition for Review Received from Chris Taliaferro Regarding Rosser Texas Post Office 75157, and Petition for Review Received from Sloane Taliaferro Regarding Rosser Texas Post Office 75157, July 14, 2011. For the purpose of these comments, Chris and Sloan Taliaferro will be referred to collectively as the "Petitioners." For the purpose of citations, the two petitions will collectively be referred to as the "Petitions," since their page numbering and content are identical, with the exception of their respective signatures.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 19, 2011 (Order No. 764).

75157.³ On September 7, 2011, the Postal Service filed comments supporting its closure determination in lieu of a legal brief.⁴

II. STATEMENT OF FACTS

Rosser, Texas is a small, rural, community, of which 70% of the population is retired, 20% is handicapped, and 10% are commuters. AR Item No. 16 at 1. According to Postal Service records, there is a minimum of 17 Rosser customers who are known to have special needs: 4 are illiterate; 3 are blind; and 10 are elderly and cannot drive. AR item No. 15, at 2. The Rosser Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office located in Rosser, Texas, which is part of Kaufman County. AR Item No. 1 at 1. Before being closed the Rosser Post Office provided service to 147 post office box customers, engaged in an average of 19 daily window transactions, and earned less than 2 hours of workload, daily. AR Item No. 21, at 1; Item No. 47, at 9. While an Officer in Charge has maintained Rosser, the facility has had a postmaster vacancy since the postmaster's retirement, March 29, 2008. AR Item No. 47, at 9.

On December 3, 2010, the Manager of Post Office Operations in Dallas, Texas requested permission to investigate the possible closure of Rosser. AR Item No. 1 at 1. The request was granted. *Id.*

On January 27, 2011, the Postal Service notified customers of Rosser of a "possible change in the way [their] postal service is provided." AR Item No. 21, at 1. As described in the notice, mail pick-up and delivery, the sale of stamps, and other customary postal services will be performed by rural route service emanating from the Scurry Post Office," an EAS-16 level post office located 5.6 miles away from Rosser. *Id.*; AR Item No. 1. Included was a questionnaire to be completed and returned by February 15, 2011. AR Item No. 21. On February 3, 2011, Rosser customers were

³ United States Postal Service Notice of Filing, July 29, 2011.

⁴ United States Postal Service Comments Regarding Appeal, September 7, 2011 (Postal Service Comments).

invited to attend a public meeting February 15, 2011, at which Postal Service representatives would be available to answer questions and provide information about postal service. *Id.*; AR Item No. 26. On February 15, 2011, the Postal Service received a petition opposing any change in service signed by 105 Rosser patrons. AR Item No. 27; Item No. 33, at 2.

Of the 147 questionnaires distributed by the Postal Service, 48 were completed and returned: 1 responded favorably to the proposal; 25 expressed opposition or concern; and 22 expressed no opinion. AR Item No. 23. The public meeting was held on February 15, 2011, at 6:00 p.m., with 74 Rosser customers in attendance. AR Item No. 33 at 2.

On March 28, 2011, the Dallas District Manager informed the Postal Service's Senior Vice President, Government and Public Policy in Washington, D.C., that a proposal for closure (proposal) will be posted in Rosser for public comment. AR Item No. 30. The proposal, along with an accompanying invitation for public comments, remained posted in Rosser for a period of 60 days, beginning March 30, 2011 and ending May 31, 2011. AR Item No. 32. A total of 6 Rosser customer comments were received during the comment period, all opposed to the proposal. AR Item No. 40, at 1.

On June 30, 2011, the Final Determination to close Rosser was approved. AR Item No. 47, at 9. The decision was based upon the (1) postmaster position vacancy; (2) decline in workload; (3) availability of a variety of delivery and retail options (including the convenience of rural route delivery and retail postal services) from the Scurry Post Office approximately 5.6 miles away; and (4) estimated annual savings to the Postal Service of approximately \$30,753. *Id.*; Postal Service Comments, at 4. The Final Determination also considered and responded to various concerns expressed by postal customers at the February 15, 2011 public meeting. AR Item No. 47, at 2-8.

III. POSITIONS OF THE PARTIES

A. The Petitioners

The Petitioners contend that by closing Rosser, the Postal Service failed to provide a maximum degree of effective and regular postal services to the community. See 39 U.S.C. 404(d)(2)(A)(iii). The petition presents three main arguments to support this assertion: (1) convenience; (2) accessibility access; and (3) secure service.⁵

B. The Postal Service

On July 29, 2011, the Postal Service filed a Notice of Filing that included the Administrative Record and Final Determination to Close the Rosser Post Office, and supplemented this filing with Postal Service Comments on September 7, 2011, in lieu of an answering brief permitted by Order No. 764.⁶ In these filings, the Postal Service argues: (1) it has met all procedural requirements of 39 U.S.C. § 404(d); (2) will provide delivery and retail services emanating from the Scurry Post Office 5.6 away; and (3) Rosser's closure will save the Postal Service an estimated \$30,753 annually. AR Item No. 47.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is

⁵ The Petitions, at 1-2.

⁶ United States Postal Service Notice of Filing, July 29, 2011.

empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.⁷

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See, 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

⁷ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. None of the petitioners in this proceeding requested suspension of the closure of the Rosser Post Office.

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

A. The Estimated Savings From Closure of The Rosser Post Office Are Inflated

The Postal Service estimates closing Rosser to reap an annual savings of approximately \$30,753. AR Item No. 33 at 9. While \$6000 of this amount constitutes the annual rent, the majority of these savings are attributable to the salary and related benefits of the former postmaster who worked at the post office until March 29, 2008. AR Item No. 15 at 1.

The Postal Service is unclear about the derivation of savings associated with the former Rosser postmaster. This is in part due to the fact that the former postmaster's status is unclear. In the Administrative Record, the Postal Service states that on March 29, 2008, the former postmaster was promoted, but later states he or she retired. AR Item No. 18 at 1; Item No. 47 at 9; and Postal Service Comments, at 2. This distinction is of the utmost importance, as it relays whether the former postmaster still receives a Postal Service salary (presumably a higher salary, given the noted promotion), or whether he or she receives retirement benefits. Both payments are at a cost to the Postal Service, but without more information the actual net costs and savings are completely unknown. In its Final Determination, the Postal Service goes on to concede that the current Rosser postmaster relief (PMR) will be transferred to another office. *Id.* Again, the Postal Service does not relay the salary it pays or will pay this individual after the transfer, so it is impossible to determine what the net cost or savings may be related to the PMR. One thing is clear; there are two individuals related to the position of Rosser postmaster, who the Postal Service is continuing to pay, in some form or another. Without a more complete explanation by the Postal Service, it is unclear how, or in what sense, the postmaster and PMR's salary and related benefits can be considered "savings" to the Postal Service.

Unless and until the Postal Service provides a justification for considering the postmaster and/or PMR's salary and related benefits to be a bona fide "savings"

resulting from closure of Rosser, the actual savings projected by the Postal Service should be reduced by the amount of such salary and benefits.

B. The Decision to Close Rosser Has Not Been Adequately Justified

In its Final Determination, the Postal Service relies upon a decline in workload and revenue for its decision to discontinue Rosser. AR Item No. 47. The Postal Service's inability to articulate another reason for the closure separate and apart from Rosser's poor economic earnings, calls into question whether Rosser's discontinuance is promulgated solely on its operational deficit. Without any other reason directly stated or implied by reference, the determination to discontinue service at Rosser should be remanded.

Title 39 clearly states that a small post office shall not be closed solely for running a deficit. 39 U.S.C. §101. While the Postal Service has adequately considered viable alternatives to service, it has failed to articulate a reason for closure that is neither a cause nor symptom of Rosser's operational deficit, leaving the Public Representative to question if the closure is actually based on an improper policy decision in violation. Title 39 U.S.C. §101(b), states:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. **No small post office shall be closed solely for operating at a deficit**, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities. (emphasis added)

Economically, the Postal Service has stated it will save \$30,753, annually, by closing Rosser.⁸ AR Item No. 33 at 9. The Postal Service's decision to close Rosser is predicated strictly on the fact that Rosser's operating costs exceed its revenue. For the last three fiscal years, Rosser revenues have steadily declined: \$15,438 for FY 2008 (40 revenue units); \$13,821 for FY 2009 (36 revenue units); and \$12,347 for FY 2010

⁸ As argued, *supra*, this savings figure appears to be inflated by unjustified salary-related data.

(32 revenue units). AR Item No. 18, at 1; Item No. 49 at 2; Postal Comments, at 2. Rosser's revenues have dwindled to the extent that its \$6000 rent has consumed approximately 50% of the revenues for each of the last two years. While the Postal Service's cites Rosser's declining revenue, low workload, and postmaster vacancy as three distinct reasons for Rosser's discontinuance, it would be illogical and disingenuous to view these problems as independent of Rosser's deficit problem when, in reality, they are two causes and a symptom thereof.

Despite having shown viable alternatives exist to serve Rosser customers, the Postal Service's improper basis for closing Rosser renders these alternatives moot. The presence of access alternatives is insufficient to alleviate or validate the Postal Service's flawed decision. In the absence of any other expressed reason for discontinuing service, the Postal Service's closure of Rosser constitutes a violation of 39 U.S.C. §101(b), and requires its decision be remanded.⁹

VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Rosser Post Office should be remanded.

Respectfully Submitted,

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⁹ While it appears Congress drafted 39 U.S.C. §101(b) to shield small less profitable postal facilities, its expressed limitations may become problematic as Postal Service closures increase. The irony of section 101(b) is that it protects those small facilities running a deficit, but leaves those that are marginally profitable more vulnerable to closure.

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